IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.2160 OF 2003
IN
SUIT NO.2324 OF 2003

Sagar Jangid ....Plaintiff
V/s.
New Sanjay Nagar SRA Co-op. Housing Soc. Ltd. & Ors. ....Defendants.

Mr.A.P. Sen i/b. Humranwala & Co. for the Plaintiff.

Mr.V.B. Konoria for Defendant No.1.

Mr.P.K. Samdhani i/b. Mr.M.G. Gawde for Defendant No.3.

CORAM : S.J. VAZIFDAR, J.
DATED : 2ND DECEMBER, 2005.

P.C. :

1. The suit is filed for a declaration that the agreement dated 27th July, 2000 entered into between the Plaintiff and Defendant No.2 is valid and subsisting and is also binding on Defendant Nos.1 and 3.

2. The land on which the construction is substantially complete belonged to MHADA which was declared as a slum area under Slum Rehabilitation Act. The scheme for developing of the said property under the Slum Rehabilitation Act. was proposed. In

respect whereof, an agreement dated 27th July, 1999 was entered into between Defendant Nos.1 and 2.

3. It appears that Defendant No.2 was in financial difficulties and therefore, entered into negotiations with the Plaintiff. Ultimately by the said agreement dated 27th July, 2000, Defendant No.2 admitted and acknowledged the receipt of Rs.24,00,000/- from the Plaintiff. In Clause 2 of the said agreement, Defendant No.2 agreed to provide to the Plaintiff an area of 2000 sq.ft. at the rate of Rs.1200/- per sq.ft. Thus the amount comes to Rs.24,00,000/-. Recital 2 of the agreement is important as it indicates that the same was a financing agreement. Recital 2 states that Defendant No.2 had agreed to execute the agreement for securing the payment of Rs.24,00,000/- paid by the Plaintiff to Defendant No.1.

4. Admittedly, the agreement between Defendant Nos.1 and 2 was terminated on 17th October, 2000. Admittedly again Defendant No.1 was not a party to the agreement between the Plaintiff and Defendant No.2 dated 27th July, 2000. The rights qua the said property if any acquired by the Plaintiff therefore would not survive upon termination of the agreement

between Defendant Nos.1 and 2.

5. An agreement dated 28th October, 2000 was thereafter entered into between Defendant Nos.1 and 3, Defendant No.2 is not a party to that agreement. Plaintiff No.2 is also not a party to the said agreement. Defendant No.3 cannot be bound by any equities or agreements between the Plaintiff and Defendant No.2.

6. On behalf of the Plaintiff it is pleaded that Defendant No.3 orally assured the Plaintiff that they would honour the M.O.U. dated 27th July, 2000 by providing the said area of 2000 sq.ft. There is nothing on record that establishes the same. Prima-facie it is difficult to accept this contention. If it was so, surely the parties would have reduced the same to writing in some manner or the other prior to the filing of the suit three years latter.

7. The construction is also complete. The Plaintiff admittedly knew that it had commenced in 2000. For this reason also, the Plaintiff is not entitled for interim reliefs.

8. The Notice of Motion is therefore dismissed.

Costs costs in the cause.